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IN THE SUPREME COURT OF
THE UNITED STATES

_____ TERM, 1970

NO. 1102

DR. LOYD C. YEARGIN, Petitioner

VS.

HAMILTON MEMORIAL HOSPITAL, DALTON-WHITFIELD COUNTY HOSPITAL AUTHORITY, DR. ELI A. ROSEN, DR. NEIL D. BOGGESS, JR., DR. MARION VICTOR DARDIN, DR. ROYAL T. FARROW, DR. MURRAY B. LUMPKIN, DR. DAVID M. NOWELL, DR. JAMES J. OOSTERHOUDT, DR. DRAYTON SANDERS, DR. SIDNEY L. SELLERS, DR. W. RONALD TIPTON, DR. DAVID A. WELLS, MR. JACK BANDY, MR. J. EDGAR BROOKER, MR. CARL GRIGGS, MR. DAVID HAMILTON, MR. J. EDD KING, MR. E. DEAN SMITH, and MR. JACK P. TURNER,

Respondents

ON PETITION FOR WRIT OF CERTIORARI

from the

SUPREME COURT OF THE STATE OF GEORGIA
IN ITS CASE NO. 25,421

BRIEF FOR RESPONDENTS IN OPPOSITION TO PETITION FOR CERTIORARI

LEMUEL HUGH KEMP
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ATTORNEYS FOR RESPONDENTS

BRIEF FOR RESPONDENTS IN OPPOSITION

OPINION BELOW

The opinion in question is that of YEARGIN v. HAMILTON MEMORIAL HOSPITAL, ET AL, 225 Ga. 661 (pp. 7-13, Appendix to Petition for Certiorari.)

JURISDICTION

Petitioner invokes jurisdiction of this court because jurisdiction is "believed to exist" under Title 28, United States Code, Sections 1254, 1257 and 2103 (Page 1 of Petition). Respondents deny that jurisdictional grounds exist under said provisions.

STATUTES INVOLVED

No federal or state statute is alleged to be unconstitutional.

QUESTIONS PRESENTED

Petitioner presents four alleged grounds or questions on pages 2 and 3 of the petition. However, the sole question involved is:

> WHETHER HOSPITAL AUTHORITIES IN GEORGIA HAVE THE POWER AND THE RIGHT TO PRESCRIBE REASONABLE RULES AND REGULATIONS GOVERNING APPOINTMENT OF PHYSICIANS TO THE MEDICAL STAFF OF AUTHORITY-OPERATED HOSPITALS, AS WELL AS THE SCOPE OF MEDICAL STAFF PRIVILEGES.

STATEMENT OF FACTS

The Petitioner instituted this case in the Superior Court of Whitfield County, Georgia against Respondents for an injunction and damages because of their uniform application of the rules, by-laws and regulations of the Hamilton Memorial Hospital to him. The Petitioner had contended that he had the **absolute** right to perform any surgical or other procedure in said Hospital and to operate pursuant to his own desires without reference to the rules, by-laws and regulations of the governing authorities of the Hospital which included his fellow physicians. Both the Trial Court and the Supreme Court of Georgia unanimously concluded that the right of the State to protect the health and welfare of its citizens through reasonable regulations of the medical and other professions and numerous court rul-

ings supporting such regulation required a rejection of petitioner's position. Additional details as to the rules and regulations involved are stated in the opinion of the Supreme Court of Georgia.

ARGUMENT AND LAW

Certiorari should be denied in this case because the opinion of the Supreme Court of the State of Georgia is not erroneous as Petitioner has not been denied due process of law, or equal protection of the laws under the Constitution of the United States. In fact these issues have also been decided against petitioner by the Federal Courts.[1] The sole question presented by this petition is whether a hospital has the power and right to prescribe reasonable rules and regulations governing appointment of physicians to the medical staff of Authority operated hospitals, as well as the scope of medical staff privileges. The Supreme Court of Georgia correctly answered this question in the affirmative and this decision should not be disturbed. Since Petitioner states the above single question in four separate numbered paragraphs, Respondents have numbered their answers to these assertions in the same manner.

(1) Hamilton Memorial Hospital, Dalton, Whitfield County, Georgia, and the public State-created Hospital Authority did not

1. "Petitioner originally filed suit against many of the same respondents in this action, and on the same facts presented here, in the United States District Court for the Northern District of Georgia (Civil Action No. 2085) alleging a deprivation by said respondents of petitioner's civil rights as well as a violation of the equal protection clause of the Constitution of the United States.

An order and opinion of the District Court filed April 14, 1969, denied relief and dismissed the action.

Petitioner appealed to the United States Court of Appeals for the Fifth Circuit, but later filed a Motion to Dismiss the Appeal, which motion was granted by the Fifth Circuit.

The opinion and order of the District Court, Appellant's Motion to Dismiss his Appeal, and the order of the Fifth Circuit granting the same are reproduced in the appendix of this brief.

Petitioner should not be heard to complain in this Court of alleged deprivation of Federally protected rights which issues were decided adversely to him. The matter is *Res Judicata* by virtue of the ruling of the District Court and dismissal by Petitioner of the Appeal therefrom."

deny Petitioner Yeargin the right to operate in or use the facilities of Hamilton Memorial Hospital as asserted in applicant's petition, Paragraph No. 1 at page 2. The final decision of the Supreme Court of Georgia and the entire record shows that Dr. Yeargin was not denied the right to operate in or use the facilities of the Hospital, but on the contrary was *granted* certain privileges and categories of procedure in accordance with the reasonable rules, by-laws, and regulations, of the Medical and Dental Staff of Hamilton Memorial Hospital. (pp. 7-11—Appendix to Petition for Certiorari) *Yeargin* v. *Hamilton Memorial Hospital, et al* 225 Ga. 661.

Petitioner now claims he has the *unconditional* right to practice in the hospital. No such unconditional right exists. See *Hayman* v. *City of Galveston,* 273 U.S. 414 (1927), 71 L. Ed. 714, 47 S. C. 363 (Physicians may be excluded, if classifications not arbitrary or unreasonable on their face). *Stanturf* v. *Sipes,* 335 F. 2d 224 (8th Cir. 1964) (Patient's suit dismissal for lack of Federal jurisdiction) Moreover, as pointed out in the opinion of the Supreme Court of Georgia, (p. 10 last paragraph Appendix to Petition for Certiorari) Dr. Yeargin did not himself request to be granted all categories and all privileges:

> "Neither did Doctor Yeargin request to be granted all categories, which seems inconsistent with his *only* contention in the case which is that he is entitled to a free hand in treating his patients in the hospital without any single restriction whatsoever. Because he was not granted this unqualified right he instituted this action."

The general rule of law as to the managing authority of a Hospital having the power to adopt reasonable rules and regulations for the government and operation thereof is stated in 24 *ALR* 2d 850 at 855 as follows:

> "It is generally agreed that the managing authorities of a hospital, under the power to adopt reasonable rules and the regulations for the government and operation thereof, may, in the absence of any statutory restriction, prescribe the qualifications of physicians or surgeons for admission to practice therein. This rule has been held or declared applicable in the case of both public and private institu-

tions, as indicated in the following citations:

United States—Hayman v. City of Galveston (1927) 273 U.S. 414, 71 L Ed. 714, 47 S. C. 363 (public).

(Numerous State cases are then cited holding to the same effect)

(2) In paragraph (2) of Petitioner's grounds for certiorari, he alleges that the Hospital denied him the "entire use" of the public hospital facilities.[2] This is not a correct statement of the facts. The decision of the Georgia Supreme Court (Appendix, p. 8 of Appellant's Petition for Certiorari) shows that Petitioner was given medical staff privileges subject to the reasonable rules and regulations of the Hospital and the Hospital Authority. Dr. Yeargin desired the free hand to operate upon and treat his patients in the hospital without any single restriction whatever. Because he was not granted that right, he instituted the action.

(3) Petitioner contends in Ground (3) that his civil rights have been violated by the trial and State court. The order of the trial judge clearly shows Petitioner was granted those medical staff privileges recommended by the medical and dental staff of the Hospital. The trial judge gave him the right of practice subject to his abiding by the rules and regulations of the Hospital, the Hospital Authority, and the Medical and Dental Staff (p. 7 and 8 Appendix to Petition for Certiorari).

This is not a case involving alleged racial discrimination and this contention is not in issue in this case. There is nothing in the record to indicate that persons similarly situated have been treated differently from Petitioner. No factual basis for invidious discrimination is alleged. There is no allegation or proof that the same rules and regulations were not applied to all other doctors on the Hospital staff. There is no allegation of the violation of any of the Civil Rights Acts.

In its decision in this case the Georgia Supreme Court held that the statute regulating the right to practice medicine, does not

2. Petitioner's claims as to deprivation of civil rights has been finally decided adversely to him by a Federal Court sitting in Georgia. See opinions of District Court for the Northern District of Georgia in Civil Action No. 2085 attached as an appendix to this Brief. See footnote 1 of this Brief.

abridge the privileges and immunities of citizens, nor was it a denial of the equal protection of the laws. Federal and State cases are cited in support of this holding. (Appendix, p. 12 of Petition for Certiorari) (Opinion of Supreme Court of Georgia)

The excellent annotation appearing in 24 A.L.R. 2d 850, discusses the cases which have drawn a distinction between a physician's rights in "public" as distinguished from "private" hospitals.

In the case of "private" institutions, the general rule derived from the case is stated to be:

> "In the case of private hospitals, it is generally held that the exclusion of a physician or surgeon from practicing therein is a matter which rests in the discretion of the managing authorities."

On the other hand, as regards "public" institutions, the rule derived from the cases is:

> ". . . the rule is that a regularly licensed physician or surgeon has a right to practice in the public hospitals of the state so long as he stays within the law, and *conforms to all reasonable rules and regulations of the institutions.*" (emphasis supplied)

State decisions with similar holdings are legion. The cases espousing controlling principles are collected in the foregoing annotation, 24 A.L.R. 2d 850, wherein the general rule is stated as follows:

> "It has been stated that a physician or surgeon although duly licensed under general laws, has no constitutional or statutory right per se, to practice his profession in a public hospital. And it is generally recognized that a practitioner cannot complain of his exclusion from a public hospital by the operation of reasonable rules and regulations adopted for the government thereof."

The most cited and better reasoned cases include: *Hamilton County Hospital v. Andrews* (1949) 227 Ind. 217, 84 N.E. 2d 469, Reh. den., 227 Ind. 228, 85 N.E. 2d 365, cert den. 338 U.S. 831, 94 L. Ed. 506, 70 S. Ct. 73; *Green v. St. Petersburg* (1944) 154 Fla. 339, 17 So. 2d 517 (public); *Selden v. Sterling* (1942)

316 Ill. App. 455, 45 N.E. 2d 329 (public); and *Van Campen v. Olean General Hospital* (1924) 210 App. Div. 204, 205 N.Y.S. 554 aff'd without op 239 N.Y. 615, 147 N.E. 219 (involving private hospital, but rule declared applicable in case of public hospital also).

(4) Petitioner asserts he should have *absolute authority* to practice medicine in Georgia without any single restriction whatsoever. Such is and could not be the law! It is clear as a matter of common sense and from the authorities cited herein that a state may and *must* place reasonable regulations and restrictions on the practice of medicine.

Respondents wish to strongly emphasize to the Court that their position in this case is identical whether Hamilton Memorial Hospital is regarded as "private" or "public." No contention is made that the Governing Body, The Dalton-Whitfield County Hospital Authority, has or should have the right to act unreasonably or arbitrarily. What is involved here is rather whether petitioner, a licensed physician may successfully assert an *absolute* right to practice at Hamilton Memorial Hospital, and in so doing determine in his sole discretion the privileges which he is entitled to exercise in the hospital. The Courts on this function have spoken with unanimity.

In *Hayman v. City of Galveston*, 273 U.S. 414, 71 L. Ed. 714, (1927) the Supreme Court of the United States, speaking through Mr. Justice Stone said:

> *"In the management of a hospital, quite apart from its use for educational purposes, some choice in methods of treatment would seem inevitable, and a selection based upon a classification having some basis in the exercise of the judgment of the state board whose action is challenged is not a denial of the equal protection of the laws."*

The Supreme Court of Georgia has followed the rulings of this Court and therefore Certiorari should be denied.

CONCLUSION

Respondents respectfully submit that the petition for a Writ of Certiorari should be denied because it fails to set forth any

jurisdictional grounds therefor and fails to state any meritorious grounds therefor.

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ATTORNEYS FOR RESPONDENTS

ACKNOWLEDGMENT OF SERVICE

Service of the within and foregoing Brief for Respondents in Opposition to Petition for Certiorari by Dr. Loyd C. Yeargin v. Hamilton Memorial Hospital, et al from Georgia Supreme Court Case No. 25,421 to the United States Supreme Court, is hereby acknowledged.

This 12th day of February, 1970.

/s/ Hugh G. Head, Jr.
HUGH G. HEAD, JR.
AS ATTORNEY OF RECORD
FOR PETITIONER IN CERTIORARI

APPENDIX

OPINION OF
U. S. DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA

CIVIL ACTION 2085

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ROME DIVISION

DR. LOYD C. YEARGIN MRS. WANDA TURNER vs. HAMILTON MEMORIAL HOSPITAL	CIVIL ACTION NUMBER 2085

This is an action under the Civil Rights statutes (42 U.S.C. §1981 ff.) by a physician suspended from the staff of the Hamilton Memorial Hospital and one of his obstetrical patients due for delivery shortly. Both plaintiffs seek injunctive relief making immediately available the facilities of the hospital and the physician plaintiff likewise seeks damages. In an order dated March 10, 1969, the Court raised certain jurisdictional issues and set the case down for a hearing on these issues. A temporary restraining order was issued on March 10 and the parties agreed to extend this injunction until the jurisdictional issues were decided. A hearing was held on March 27, 1969, on these jurisdictional issues.

There is no diversity jurisdiction present and this action must rise or fall on its standing under the Civil Rights statutes invoked. As has been pointed out by this court previously (Grant v. Grizzell, Civil Action No. 11316, Atlanta Division), each of such actions has a dual character in that, over and beyond the factual questions of intent and conspiracy, (1) the offending persons must act "under color of state law" and (2) there must be a denial of a right, privilege or immunity secured by the United States Constitution and laws. See United States v. Classic, 313 U. S. 299 (1941). e.g., Huey v. Barloga, 277 F. Supp. 864 (N.D. Illinois 1967).

Petitioner alleges that the defendant is a so-called "Hill-Burton" hospital, created and maintained by federal, state and local funds. As to requirement (1), it appears that such public status is sufficient to constitute any actions by the defendants as done "under color of state law." Simkins v. Moses H. Cone Hospital, 323 F. 2d 959 (4th Cir. 1963); Eaton v. Grubbs, 329 F. 2d 710 (4th Cir. 1964); Cypress v. Newport News General & Nonsectarian Hospital Ass'n., 375 F. 2d 648 (4th Cir. 1967). Sams v. Ohio Valley General Hospital Ass'n., 257 F. Supp. 369 (N.D. W. Va. 1955). Cf. Wallach v. Cannon, 357 F. 2d 557 (8th Cir. 1966) absence of state authorization); Rogers v. Provident Hospital, 241 F. Supp. 633 (N.D. Ill. 1965) (Private hospital). Accordingly, the court is satisfied as to jurisdiction of the parties on that basis.

As to requirement (2), however, not every right is a constitutional right within the meaning of these statutes. It must be clear that a federally recognized right is involved. See, e.g., Collins v. Hardyman, 341 U. S. 651 (1951); Fleming v. Adams, 377 F. 2d 975 (10th Cir. 1967); Nicklaus v. Simmons, 196 F. Supp. 691 (D. Neb. 1961). A clear case is presented where the right denied is specifically enumerated in the United States Constitution, e.g., first amendment freedoms, right to be free from unreasonable searches and seizures, etc. or "race, creed or color." This Court enumerated a number of these rights, a violation of which clearly presents a federally cognizable right, in Grant v. Grizzell, *supra.* The troublesome cases are those in which the only possible "federally recognized claim" is a violation of due process or equal protection of some state-controlled right. In the previous order the Court indicated that plaintiffs were proceeding under an equal protection argument and had not attempted to raise questions of due process. Plaintiffs' amendments to the complaint and the oral hearing only reinforce this conclusion. Plaintiff Yeargin claims a denial of the equal protection clause in defendant's depriving him "of his right to exercise his State-of-Georgia given license and privilege to practice medicine and surgery" in this hospital, and plaintiff Turner "of her right to receive the hospital services and patient care there" by the doctor of her choice.

The equal protection provision of the Fourteenth Amendment provides that no state shall "deny to any person within its jurisdiction the equal protection of the laws." Some would argue that the equal protection clause as incorporated in the various Civil Rights statutes gives a cause of action in federal court only when equal pro-

tection of *federal* rights is involved. This proposition is sustainable but easily lends itself to a serious misunderstanding as to the nature of equal protection. For example, in Swank v. Patterson, 139 F. 2d 145 (9th Cir. 1944), the Court held that the right to practice medicine and surgery existed, if at all, by virtue of Arizona law but was not secured by the Constitution or laws of the United States. While it is true that the basic right is created by state law, another theory is that the equal protection clause still affords all citizens the right to be free from invidious discrimination under the law. Hence, a state in dealing with its domestic concerns has a broad power to classify citizens in the exercise of its police power and this power is limited only by constitutional rights and the doctrine that a classification may not be palpably arbitrary. Phillips Chemical Co. v. Dumas Independent School Dist., 361 U. S. 376 (1960). "The prohibition of the Equal Protection Clause goes no further than the invidious discrimination." Williamson v. Lee Optical Co., 348 U. S. 483 at 489 (1954). This principle is sufficient to dispose of the jurisdictional issues in this case. As both plaintiffs are white, racial discrimination, which is per se invidious, is not a factor. Plaintiffs allege no factual basis for claiming invidious discrimination. There are no allegations that persons similarly situated have been treated differently from plaintiffs. See Hackin v. Lockwood, 361 F. 2d 499 (9th Cir.), cert. denied, 385 U. S. 960 (1966). The petition is phrased in terms of the unconditional right of a doctor to practice in a hospital and the unconditional right of a patient to have the doctor of her choice give treatment in the hospital of her choice. No such unconditional rights exist. See, (e.g., Hayman v. City of Galveston, 273 U. S. 414 (1927) (physicians may be excluded if classifications not arbitrary or unreasonable on its face); Stanturf v. Sipes, 335 F. 2d 224 (8th Cir. 1964) (patient's suit dismissed for lack of federal jurisdiction.) Accordingly, the attempt to vindicate the rights asserted is a matter that must be resolved in the state courts.[1] Plaintiff's action is there-

[1]The failure of the facts to support allegations cognizable in federal court has resulted in a rather narrow holding by this Court. However, the broader implications of this general problem are so important as to merit further discussion.

The coming of age of the Fourteenth Amendment has brought with it a number of unsettling possibilities as attorneys use their imagination to evolve more and more approaches that could expand avenues of relief in federal court. This expansion jeopardizes the place of the federal courts as courts of limited jurisdiction. A substantial effort needs to be made

to explore and articulate the limitations upon the expansion. The tests of "invidious discrimination" and "arbitrary and unreasonable classification" are somewhat vague and difficult to administer. Reduction of cases in this area can in part be accomplished by strictness in pleadings, in the sense that the plaintiff must state facts which arguably involve a constitutional violation. Moreover, the jurisdictional amount requirement in many cases can be of help. Some courts have suggested that the vindication of a private property or monetary right of any kind is not within the purview of 42 U.S.C. §1931, et seq. See, *e.g.*, Bradford Audio Corp. v. Pious, 392 F. 2d 67 (2d Cir. 1968); Gray v. Morgan, 371 F. 2d 173 (7th Cir. 1966), *cert. den.* 386 U. S. 1033 (1967); Hopkins v. Wasson, 227 F. Supp. 278 (E. D. Tenn. 1962), *aff'd.* 329 F. 2d 67 (1964); *Note, The "Property Rights" Exception to Civil Rights Jurisdiction—Confusion Compounded,* 43 N. Y. U. L. Rev. 1208 (1968). The Fifth Circuit has apparently not followed this view. See, *e.g.*, Parks v. Ivan Allen, Civil Action No. 25596 (5th Cir., March 27, 1969); Massell v. Saunders, 372 F. 2d 573 (5th Cir. 1967) (loss of garbage business); Hornsby v. Allen, 326 F. 2d 605 (5th Cir. 1964) (liquor license case). Questions still remain as to the type of deprivations which are protected under the equal protection and due process clauses. In any type of state action, there will be some disparity as between the treatment of different citizens. In time these differences may well become the subject matter of suits in the federal courts. For example the *Hornsby* decision opened the doors to huge amounts of litigation. Further attention needs to be given to this difficult and uncertain area of the law, and some delineation made of the proper scope of federal jurisdiction in this regard.

fore dismissed. In order to allow the patients of Dr. Yeargin to make other hospital arrangements, the effect of this dismissal is made prospective and, by agreement, will remain in effect for thirty (30) days from the date of this order.

IT IS SO ORDERED.

This the 11th day of April, 1969.

Sidney O. Smith, Jr.
United States District Judge

FILED IN CLERK'S OFFICE
AND A TRUE COPY CERTIFIED, THIS
APRIL 14, 1969

Claude L. Goza, Clerk

By: Sadye J. Langston

Deputy Clerk

UNITED STATES
COURT OF APPEALS
FIFTH CIRCUIT
No. 27,978

DR. LOYD C. YEARGIN and MRS. WANDA TURNER,

Plaintiffs-Appellants

versus

HAMILTON MEMORIAL HOSPITAL, *et al,*

Defendants-Appellees

APPELLANTS' MOTION TO DISMISS

Come now the Appellants and, with leave of this Court, respectfully dismisses and withdraws this Appeal.

Respectfully,

Hugh G. Head, Jr.,
Attorney for Appellants

Copies of the foregoing Motion to Withdraw Appeal have been served on all Appellees by posting in the United States Mail with proper postage affixed to John T. Minor, III, Esquire, and to Trammell E. Vickery, Esquire, and to Attorneys Pittman & Kinney this the 9th day of October 1969.

Hugh G. Head, Jr.
Appellants' Counsel

ORDER OF DISMISSAL

By FIFTH CIRCUIT COURT OF APPEALS

Mr. Claude L. Goza, Clerk
U. S. District Court
P. O. Box 1186
Rome, Ga. 30161

Dear Mr. Goza:

No. 27978—Dr. Loyd C. Yeargin and Mrs. Wanda Turner v. Hamilton Memorial Hospital, et al (D. C. No. CA 2085)

Enclosed is a certified copy of an order this day entered by the Court dismissing the referenced appeal, which is issued as and for the mandate.

Returned herewith are the record on appeal and exhibits in this case. Please acknowledge receipt on enclosed copy of this letter.

Very truly yours,

EDWARD W. WADSWORTH, Clerk
By Audrey D. Glynn
Deputy Clerk

/adg
Encls.
cc & enc. to:
Mr. Hugh G. Head, Jr.
Mr. John T. Minor, III
Mr. Trammell S. Vickery

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 27978

DR. LOYD C. YEARGIN and
MRS. WANDA TURNER,

Plaintiffs-Appellants,

versus

HAMILTON MEMORIAL HOSPITAL,
ET AL,

Defendants-Appellees.

— — — — —

Appeal from the United States District Court for the
Northern District of Georgia

— — — — —

Before THORNBERRY, MORGAN and CARSWELL, Circuit Judges.

BY THE COURT:

IT IS ORDERED that the appellants' motion to dismiss the appeal in the above entitled and numbered cause is hereby Granted.

U. S. COURT OF APPEALS

FILED

NOV. 10, 1969

EDWARD W. WADSWORTH
CLERK